IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.734 of 1987
with
CIVIL APPLICATION No.1809 of 1987
with
CIVIL APPLICATION No.898 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

A K DOSHI
Versus
DY.DIRECTOR,DIST.CENSUS HAND- BOOK UNIT

Appearance:
1. Special Civil Application No. 734 of 1987
Mr.B.P. Tanna, Senior Counsel with Ms.M.N. Karravala for Messrs Tanna Associates for the petitioners.

Mr.M.S. Rao, ASSISTANT GOVERNMENT PLEADER for
Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 13/02/2004

ORAL JUDGEMENT

The petition is filed by three persons, two of whom were appointed as Proof Readers on 01.07.1982 and the one was appointed as Gujarati Typist on 02.07.1982. The appointment order states that they were appointed on temporary basis and on completion of the work, their services will be terminated. In fact, the words used are too vague as if the matter was for couple days or at the most for couple of months and then these petitioners were to go home, but then the hard reality of life is that these petitioners continued for long five years, i.e. upto 1987. In 1987 when they apprehended that their services are likely to be terminated, they approached this Court by way of this petition, the present petition was filed on 26.02.1987 and the first order was passed on 26.02.1987 which reads thus,

"Notice pending admission returnable on 17th March 1987. Ad interim relief in terms of para 15(C) granted till then. .. "

Para 15(C) reads thus,

"15(c) pending admission, hearing and final disposal of this petition, be pleased to direct the respondents-authorities not to terminate the service of the petitioners and/ or if order of termination is passed to stay the operation, implementation and enforcement a of the said order of termination and be pleased to direct the respondents to maintain status quo."

2. The matter was listed and adjourned on various occasions and interim relief was continued from time to time until this Court (Coram: R.C. Mankad, J.) passed an order on 02.09.1987, which reads as under:

"Rule. Interim relief restraining the respondents from terminating the services of the petitioners except in accordance with law. Ad interim relief shall stand modified to the above

extent. If, according to the respondents Industrial Disputes Act is not applicable to the petitioners and if the order of termination is passed without complying with the provisions of the said Act, the order of termination shall not be implemented for two days after it is communicated."

3. The authorities passed an order on 08.10.1987 which is placed on record of the case by filing Civil Application No.1809 of 1987 wherein on 16.10.1987 the Court was pleased to issue notice pending admission and notice as to interim relief making it returnable on 03.11.1987 and thereafter on 07.11.1987 the Court passed the following order.

"The learned advocates have been heard as regards the grant of interim relief. It will take some time to pass some orders in this matter as the learned advocates for both the sides want to cite some decisions. In view of this, ad interim relief in terms of para 5(A) upto 17.11.87. S.O. to 13.11.87 for further hearing the learned advocates. Direct service permitted."

Thereafter the matter was adjourned on various dates and the last order relevant for the purpose is passed on 27.11.1987 which reads thus,

"S.O. to 30.11.1987. Ad interim relief to continue until further orders."

Thereafter, this Civil Application is listed on number of occasions, but neither rule nor any other order is passed in this Civil Application. From the record it appears that this Civil Application was last on the Board on 27.04.1988 and it was adjourned to 28.04.1988. Thereafter, no order is found on the order sheet. The Civil Application is now listed with the main petition.

4. Mr.Rao, the learned Assistant Government Pleader submitted that the respondent did make all possible sincere efforts to get the matter heard and in the alternative to get interim relief vacated. But then no foot prints of these attempts of the respondents are found on record of the case, except filing of one, Civil Application, being Civil Application No.6593 of 2003, filed on 09.09.2003. This Civil Application was disposed of by this Court by order dated 18.09.2003. The ground on which the matter was sought to be fixed for final hearing in this Civil Application is mentioned in para 2,

which reads as under:

"2. The applicants state and submit that the above referred SCA is pending since 1987 and because of the said order which is operating in favour of the present opponents, the services of the org. petitioners are continued which cause a great prejudice to the other persons. Hence the State Govt. has also filed one Civil Application No.898 / 1991 for vacating the interim relief. But somehow, the interim relief is operating till today in favour of the present opponent, and also because of the pendency of this petition, the other persons are getting benefit, though they are not entitled to get the same."

5. The Court after taking into consideration the same, was pleased to order that petition be placed on Board for final hearing on 12.09.2003.

6. One Civil Application being Civil Application No.898 of 1991 was filed on 30.04.1991. The said Civil Application No.898 of 1991 is not notified along with the main matter. Hence the papers are called for from the Registry. On 04.07.1991, this Civil Application was placed before a Division bench, when the following order was passed:

"This matter appears to be a matter of Single Judge. Therefore, this may be placed before the appropriate Court."

Thereafter, the matter was placed before the learned Single Judge, who ordered to place the Civil Application with the main matter.

6.1 No other order is obtained in the said Civil Application. An affidavit in reply, affirmed on 05.03.1992 was filed with which number of documents were produced. Today, during the course of arguments the learned Assistant Government Pleader, Mr.M.S. Rao has tendered an affidavit in rejoinder, affirmed on 25.01.1993, which is taken on record.

7. From the record it transpires that after the matter was ordered to be listed for final hearing, it was on Board and while it was on Board, the learned advocate appearing for the petitioners pointed out to the Court that though similarly situated persons (employees) are

allowed to cross the Efficiency Bar, the petitioners are not allowed only because the petition is pending before this Court. The learned Assistant Government Pleader, in reply to this submission submitted, which is recorded in order dated 24.12.2003, that is:

"Decision was taken by the department in favour of other employees. However, since the matter is pending before this Court and since the petitioners are continued in view of the order of status quo, no order was passed in favour of the petitioners. .. "

8. The learned Assistant Government Pleader made available the original files for perusal to this Court and pointed out that decision is taken in connection with crossing of Efficiency Bar of the petitioners. The Court held that pendency of the petition is no ground for not allowing the petitioners to cross the Efficiency Bar, if they are otherwise eligible. The Court recorded that it is not in dispute that similarly situated employees who have not come to this Court have been allowed to cross Efficiency Bar, directed the respondents to take appropriate decision in this connection within two weeks from the date of the order and further ordered that the matter be notified for final hearing on 22.01.2004. That is how the matter is notified for final hearing. On 05.02.2004 when this matter is taken up for hearing, the learned Assistant Government Pleader, Mr.Rao informed the Court that the decision to allow the petitioners to cross Efficiency Bar is taken and process to give effect to the same is on and the petitioners will be given the benefits arising within the time which normally taken by the Government Department in such matters.

9. Reverting to the facts of the case, the case of the petitioners is that the petitioners were appointed by respondent no.2 through Employment Exchange. Petitioner no.1 was appointed on 02.07.1982 whereas petitioners no.2 & 3 were appointed on 01.07.1982. As stated hereinabove appointment order was with a rider that the appointment is in anticipation of the approval from the General Administration Department on absolutely temporary basis and the appointee will be terminated on the work being completed. But then the petitioners were continued in service for all these years, i.e. from 1982 to 1987. In 1987 they apprehended termination and therefore, they approached this Court. Thereafter, as narrated hereinabove interim relief was granted in their favour and they continued to be in service by virtue of the orders of this Court till date. Mr.Rao, the learned

Assistant Government Pleader submitted that this length of service, which by now is more than two DECADES, i.e. about 22 years should not weigh with the Court, while considering the case of the petitioners for grant of any relief. Even if this submission is accepted, this Court cannot be unmindful of the fact that the petitioners who were appointed on 01.07.1982 and 02.07.1982 were allowed to continue in service till they apprehended termination in the year 1987. So, for about five years and more they were allowed to be continued in service without there being any order from the Court. Secondly, even after the order was passed, granting interim relief on 26.02.1987, which was then varied to an extent on 02.09.1987 and thereafter by order dated 07.11.1987 in Civil Application No.1809 of 1987, which was against made to operate, by order dated 27.11.1987, 'till further orders', the respondent authorities have not taken any steps much less effective steps till 2003. As in 2003, an application being Civil Application No.6593 of 2003 was filed in the month of September 2003 praying to get the interim relief vacated. In view of the aforesaid fact situation, this Court has no hesitation to hold that the respondent authorities are solely responsible for allowing the interim relief to operate from 1987 to 2003. It is true that no orders can be passed only relying on this particular fact, but then the Court cannot be unmindful of this fact that the petitioners who joined the department in the year 1982 have by now served the department for long 22 years.

10. At this juncture, an important fact is required to be noted, Mr.Tanna, the learned senior counsel has placed on record the details of the persons who are allowed to work on the establishment of 'District Census and Hand Book Unit' (hereinafter referred to as "DCHB") like the staff of DCHB consists of a clerk, Gujarati Typists, Proof Readers and peons, totalling to 31 (thirty one). Therefore, the submission of Mr.Rao, the learned Assistant Government Pleader that there is no work at DCHB is not found acceptable by this Court. In Civil Application No.6593 of 2003 also it was contended that the petitioners are required to be continued in service on account of the interim relief granted by this Court though there is no work available, is not born out from the facts of the case.

11. On the last occasion, i.e. 05.02.2004 when the matter was heard for some time, it was pointed out by the learned counsel, Mr.Tanna that in the same DCHB unit along with the petitioners, 8 other Proof Readers and 2 peons were appointed and they are continued till date

without there being any order from any court. The learned counsel submitted that to his knowledge, the only differentiating factor between the other Proof Readers and two of the petitioners who are Proof readers is that those Proof Readers were appointed little earlier than the two of the petitioners (Proof Readers). The details of those other set of Proof Readers appointed in the DCHB unit are set out at page 22 of the petition. Mr.Rao, the learned Assistant Government Pleader on instructions in writing from the Deputy Secretary, General Administration Department states that the other set of Proof Readers readers are also appointed 'irregularly' but then they are senior to the petitioners and therefore, Department decided to defer the decision in their matter till the present petition is decided. Mr.Rao, the learned Assistant Government Pleader produced a copy of letter dated 12.02.2004 by which he received the aforesaid instructions. In para 3 of that letter it is stated,

> "Taking into consideration the workload, the other set of proof readers were continued from time to time and taking into consideration their purpose they were allowed to cross Efficiency Bar and pursuant to the order passed by this Court the petitioners are also allowed to cross EB."

This is nothing but a clear admission of two facts on the part of the authorities. One, that the petitioners were meted out discriminatory treatment in the matter of crossing of Efficiency Bar and another, that there is workload which required the authorities to continue those persons in service. The authority has tried to blow hot and cold in the same breath in reply to the question as to, 'why the other persons are continued in service'. The answer is, because the present petition is pending and during the pendency of the petition, the persons senior to the petitioners be not sent home and the decision in this petition will govern the fate of those other Proof Readers also. On the other hand, when the question of crossing of Efficiency Bar arose the other Proof Readers are allowed to cross Efficiency Bar, taking into consideration their performance but the petitioners are denied to cross Efficiency Bar, because there is an order of status quo. The petitioners are allowed to cross Efficiency Bar only after this Court passed an order. This reflects the conduct of the authority and the discriminatory treatment meted out to the petitioners only because they have approached this Court. This is not expected from a responsible officer to treat the petitioners differently only on the ground that the petitioners have approached this Court. The concerned

authority shall take serious note of the matter and should issue necessary directions so that similar incident is not repeated by any other officer.

12. The fact that the petitioners were appointed in the year 1982 and to be precise two of the petitioners were appointed with effect from 01.07.1982 and one of the petitioners was appointed with effect from 02.07.1982, after that they were allowed to continue in service till 1987, i.e. for a little more than five years, is a sufficient ground for which the authorities shall consider the case of the petitioners for regularisation in the aforesaid letter dated 12.02.2004. It is stated that the appointment of two Peons was found to be regular as they were appointed through Employment Exchange. So far as the petitioners are concerned their recruitment was also through Employment Exchange and this fact is not in dispute as it is admitted in para 4 of the affidavit in reply filed in Special Civil Application No.350 of 1985, which is adopted in this matter. The relevant part of para 4 reads as under:

> "4. I say that several Government servants from various departments were deputed to the said Cell and in or about February 1982 some Clerks, Typists and Proof Readers weer also recruited temporarily on an ad hoc basis through the Employment Exchange. .. "

13. Despite this fact if it is to be contended that recruitment of the petitioners is not regular, then the learned Assistant Government Pleader ought to have pointed out and should have placed on record the details of the procedure to be followed for recruitment of Proof Readers and Gujarati Typists at the relevant time. Mr.Rao, the learned Assistant Government Pleader is though assisted by the Deputy Director, DCHB, nothing material has come out on the point.

13.1 Besides that in the Office Order dated 22.09.1982, which is produced by the learned Assistant Government Pleader, for perusal of the Court it is stated that,

> "In the office of the Deputy Director, DCHB, Ahmedabad posts of Clerk, Gujarati Typist and Proof Reader are created which are vacant, from the names recommended by Employment Exchange following persons are appointed to the post and from the date (before office hours) the details of which are set out below in pay scale of

Rs.260-400/-, with allowances admissible under the rules on absolutely temporary basis."

Now if in case of Peons appointments are considered to be regular because their names were forwarded by Employment Exchange there is no reason for which appointments of the petitioners can be considered to be irregular, unless it is pointed out that there was a specific procedure for recruitment to such posts. In fact by amendment the petitioners have pointed out the cases of Smt.C.G. Parekh, J.S. Barot and R.M. Nagar of whom Smt. C.G. Parekh and J.S. Barot were recruited as English Typists in the years 1971 and 1973 respectively while R.M. Nagar was appointed as Peon in the year 1973, who after passing his SSC Examination in March 1974 was promoted as clerk on 19.08.1978 on regular basis. This averment which is placed on record by an amendment in para 11A is not controverted by the authorities in the affidavit in reply.

14. Unless it is shown that for a particular post there was a prescribed procedure for recruitment and that a person is appointed without following that procedure, an appointment cannot be branded as an irregular appointment. Not only that in absence of making out such case, such branding is not only uncalled for but also unwarranted because it is too harsh a term depriving the petitioners of the sympathy of the court and making the court to believe that appointment is by back door entry. In the present case it is on record that the names of the petitioners along with those other persons were forwarded by the Employment Exchange and more so in the year 1982 when the situation on the employment front was in such a bad shape as of today, besides it is not shown to the court as to why the appointment of the petitioners be considered irregular. At this juncture, it is important to note that the petitioners have shown their willingness to abide by any terms and conditions on which their services can be regularised like (i) they may be transferred to any Department, (ii) they may be subjected to passing of any departmental examination. This shows the genuine and dire necessity on the part of the petitioners to have employment and rightly so at this fag end of their service career as they all are above 45 years of age.

15. Mr.Tanna, the learned advocate relied upon a decision of the Honourable the Apex Court in the matter of Gujarat Agricultural University Vs. Rathod Labhu Bechar and others, reported in A.I.R. 2001 SC 706. The learned counsel submitted that the said decision has

considered almost all the decisions on the point and also considered various pros and cons arising in such type of matters and has then approved the scheme of giving regular appointment to the persons who were no way better placed than the present petitioners. The learned senior counsel relied upon paras 20, 26, 29 & 30 in this regard. The same are reproduced for ready perusal.

"20. State of Haryana v. Piara Singh, 1992 (4) SCC 118 : (1992 AIR SCW 2315 : AIR 1992 SC 2130 : 1992 Lab IC 2168). This was a case of ad hoc/ temporary Govt. employees. This Court held, those eligible and qualified and continuing in service satisfactorily for a long period have right to be considered for regularisation. Long continuing in service gives rise to a presumption about the need for a regular post. In such cases Govt. should consider feasibility of regularisation having regard to the particular circumstances with a positive approach and empathy for the concerned person."

"26. In the light of the aforesaid decisions we now proceed to examine the proposed scheme. Under clause 1 it is proposed that all daily wage workers, whether skilled, semi skilled or unskilled who have completed 10 years or more of continuous service with a minimum of 240 days in each calender year as on 31st December 1999 is to be regularised and be put in the time scale of pay applicable to the corresponding lowest grade in the university. However, the said regularisation is subject to some conditions. Under clause 1(a) such employee is eligible only if he possess the prescribed qualifications for the post at the time of their appointment. The strong objection has been raised to this eligibility clause. The submission is, those working for a period of 10 or more years without any complaint is by itself a sufficient requisite qualification and any other rider on the facts of this case would prejudice these workers. We find merit in this submission. We have perused the qualifications referred in the aforesaid recruitment rules according to which, qualification for Peon is that he should study up to 8th std., for Operator cum Mechanic, should have Diploma in Mechanic having sufficient knowledge of vehicle repairing experience in automobile or tractors Dealers workshop for two years, for Chowkidar, he must be literate and

have good physique. Literate is not defined. For Plumber to have ITI Certificate.

We feel that daily rate workers who have been working on the aforesaid posts for such a long number of years without complaint on these posts is a ground by itself for the relaxation of the aforesaid eligibility condition. It would not be appropriate to disqualify them on this ground for their absorption, hence Clause 1(a) need modification to this effect."

"29. The decision to absorb some of the employees at one point of time or in a phased manner depends on facts and circumstances of each case. Where very large number of workers are required to be absorbed, this Court accepted the formula, in the past to absorb such employees under a Scheme in a phased manner. This is done to work it out within its financial means."

"30. According to the State counter if absorption is made from 1.1.1993 of all those who have completed ten years of service as per Tribunal order, the payment towards arrears would be to the tune of 15 crores. Since in the proposed scheme, absorption is from 1st January 2001, the State has already gained much more than this arrears of more than 15 crores. In this light and in the absence of details being placed before us, we are leaving the extent of creation of the posts on the State Government. We hope and trust, the Government who is the guardian of the people and is obliged under Article 38 of the Constitution, to secure a social order for the promotions of welfare of the people, to eliminate inequalities in status, will endeavour to give maximum posts even at the first stage of absorption and do the same in the same spirit for creating additional posts after enquiry as we are indicating hereunder. It is necessary that the State Government to set up an enquiry to find what further number of additional posts are required for regularising such other daily rated workers, and after assessing it, to create such additional posts for their absorption. This exercise should be done by the State Government within a period of six months. The submission on behalf of the respondent is that those who are not regularised and are continuously working for 10 or more years with minimum of 240 days in each

calendar year, they should be paid minimum pay scale as admissible to an incumbent regularised on similar post doing similar work instead of minimum wages as prescribed by the Government. The dispute thus is, whether such workers to be paid minimum daily wage as Government prescribes as per the scheme or pay them the minimum pay scale admissible to such regularised worker without increment and other benefit. This Court in one set of decisions have said to regularise them in one block and pay them the same minimum pay scale as admissible to a regular employee as in; Surinder Singh v. Engineer in Chief, CPWD, 1986 (1) SCC 639 : (AIR 1986 SC 584 : 1986 Lab IC 551), U.P. Income Tax Department Contingent Paid Staff Welfare Association v. Union of India, (1987) Supp SCC 658 : (AIR 1988 SC 517 : 1988 Lab IC 958), 1998 State of Punjab v. Devinder Singh, 1998 (9) SCC 595, Chief Conservator of Forests v. Jagannath Maruti Kondhare, 1996 (2) SCC 293 : (1996 AIR SCW 735: AIR 1996 SC 2898 : 1996 Lab IC 967) and in other cases to absorb in a phased manner under a scheme which depends on the facts of each case. In Mool Raj Upadhayaya v. State of H.P. (1994 Supp (2) SCC 316) (supra), this Court approved a scheme under which the daily wage workers whether skilled or unskilled who have not completed 10 years of service was to be paid daily wage at the rates prescribed by the Government of H.P. from time to time for daily wage employees falling under Class III and IV till they are appointed regularly. Strong reliance is placed on behalf of the University on this case and also, looking to the fact that it has no impressive source of its own, being an Agricultural University, depending on the State fund, we hold they should be paid minimum wages as prescribed by the Government from time to time as proposed under the scheme. We approve both clauses 2 and 3 on the facts and circumstances of this case. In fact, in seeking minimum pay scale to such daily rated workers as admissible to a regular employee is based on the principle of 'equal pay for equal work'. It is pertinent to refer, in this case the observation of the High Court:

" .. Workmen are not claiming equal pay for equal work but they are claiming permanent status as Class IV employees as they are working and have gained more than sufficient

experience in their work .. "

16. To point out the approach of the Government in this type of matters, Mr.Tanna submitted that various labour unions/ associations were pressing their demands with regard to the work charged employees and the questions pertaining to the work charged employees were pending with the Government for a quite long time. That is why Resolution No.WCE-1288 (5)-G 2 dated 24.03.1988 of the Roads & Buildings Department was passed by which a committee under the Chairmanship of the Honourable Minister (Roads & Buildings) was appointed consisting of as many as eight members in addition to that of the President of the Committee. The said committee submitted its report and on the basis of the said report different departments of the State Government like Roads & Buildings Department; Water Resources Department; Narmada Development Department; Forest & Environment Department; Agriculture & Rural Development Department; Health & Family Welfare Department; and Panchayat & Rural Housing Department have entered into settlement under section 2(p) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") with number of unions like Gujarat State Employees Union, Gujarat State Public Construction Labour Union, and Agriculture & Labour Association. After such settlements under section 2(p) were entered into, the Government after making minute examination of the demands of the Labour Unions and the report of the Committee which was accepted in toto by the Government, a Resolution dated 17.10.1988 being Resolution No.WCE 1588 (5)1 G-2 was passed and benefits were extended to work charged employees by putting them in various categories.

17. The learned counsel Mr.Tanna submitted that the present petition is filed contending,

".. .. All the above mentioned petitioners have put in admittedly more than 240 days of service which is unblemished and no adversia has been communicated so far. Therefore, procedure of retrenchment under section 25F of the Industrial Disputes Act is a sine qua non. The petitioners also state that no notices of retrenchment have so far been communicated. .. .."

18. He submitted that in view of these averments and similar other averments made in the petition, this Court while issuing rule in the matter was pleased to observe as under:

".. If according to the respondents, Industrial Disputes Act is not applicable to the petitioners and if the order of termination is passed without complying with the provisions of the said Act, the order of termination shall not be implemented for two days after it is communicated."

19. The learned senior counsel submitted that, that is why the petitioners filed Civil Application No.1809 of 1987 and placed reliance on a decision of the Rajasthan High Court in the matter of Anand Prakash Vs. Union of India, reported in 1986 (52) FLR page 8, wherein incidentally the Court had an occasion to consider the scope of the term, 'industry' defined in section 2(j) of the Act. The learned counsel invited attention of the Court to the relevant portion of the said decision, wherein the learned Judge had observed that,

"The census operation is neither regal function of the State nor it can be said that it cannot be delegated to any of the corporation under the statutes enacted by the authorities. .. "

The learned Judge referring to Encyclopedia Britannica, Volume 5, Page 167, according to which 'Census' corresponds to an inventory in business whereas 'registration statistics' correspond to the daily record of sales, purchases and other transactions. It is observed that,

".. Thus, the census is analogous to the trade or industries and it falls within the definition of Sec.2(j) of the Act."

20. The learned senior counsel submitted that the authorities have erred in not considering the present dispute of the petitioners to be an industrial dispute and in not holding that the provisions of the Act are applicable to the facts of the present case. He further submitted that the contents of the petition have remained uncontroverted as the respondent authorities have not chosen to file any affidavit in reply controverting the factual aspects of the matter. What is filed is only an adoption of the affidavit in reply which is filed in Special Civil Application No.350 of 1985 which in no way deals with the factual averments made in the petition.

21. Mr.Rao, the learned Assistant Government Pleader

submitted that the Census Department is not an 'industry' and therefore, the authorities are right in passing order dated 08.10.1997. Taking into consideration the contents of the appointment order by which the petitioners were appointed, the Government had power, which is rightly exercised in terminating the services of the petitioners. The learned Assistant Government Pleader submitted that the petitioners have not challenged the said order dated 08.10.1987 and therefore, no relief can be granted to the petitioners. He placed reliance on judgement dated 02.07.1985 of Division Bench of this Court in Special Civil Application No.802 of 1984, rejecting the petition. As is stated in the said judgement, the said petition was filed by six employees working on the post of 'Computer' with the first respondent in the office of the second respondent-Director of Census Operations, Gujarat. One of the contentions raised in the said petition was that as per the provisions of Central Civil Services (Temporary Servants) Rules, the petitioners of that petition had acquired the status of quasi permanent under the provisions of Rule 3. It was also contended that the services of the petitioner could not have been terminated without verifying the requirements of section 25F of the Act, but then on the facts of that case the Court had not accepted the said arguments. The order being on the facts of that case has no application to the present case.

22. As against this, the present petitioners have filed their reply to Civil Application No.898 of 1991 placing on record a copy of letter dated 19.02.1990 addressed by the Deputy Director, DCHB to the Under Secretary (Administration), General Administration Department seeking sanction of number of posts set out in para 8 of that letter. The said contents are corroborated by the details which are placed by the learned senior counsel on record to the effect that as many as 18 persons are working as on date on deputation in the DCHB Unit from various departments of the Government. The petitioners have also placed on record a copy of letter dated 24.01.1992 of the Deputy Director, DCHB addressed to the Under Secretary (Administration), General Administration Department, wherein in para 7 it is stated that, '2 Proof Readers and 1 Gujarati Typist are on the establishment of this office (DCHB) as per the order of the Honourable High Court of Gujarat and sanction to continue them upto 28.02.1992 is already granted. All these three posts be sanctioned till 28.02.1993 or till the time the said order is vacated'. This goes to show that the work is of perennial nature and the Deputy Director, DCHB himself had to avail the

services of the required staff. In that letter dated 24.01.1992 it is set out in detail as to what exact work which is undertaken by DCHB and how much time it takes. It is mentioned in para 4 that, 'out of 19 districts, in the year 1992-93, English Edition of District Census Hand Booklet for 4 (four) districts is in the process of preparation and is being printed'. From this it is clear that if in the year 1992, District Census Hand Booklet is in the process of being prepared and printed for 4 (four) districts, for the remaining districts the preparation and printing of District Census Hand Booklet will take proportionate time.

23. The petitioners have also placed number of other documents on record to contend that work is available for and that the Government is not incurring any avoidable expense by paying the petitioners, only on account of the stay order of this Court.

24. From the aforesaid discussion it is clear that though the petitioners were appointed by appointment orders wherein the phrase, "on absolutely temporary basis and liable to be terminated on completion of work" was incorporated, the petitioners were continued in service till 1997 without there being any order of the Court. From the record of the case it is also clear that there is sufficient work and that too of perennial nature is available. Despite this fact in the affidavit in reply the authorities are making grievance against continuing the petitioners in service on the ground that, (i) they were not regularly appointed, (ii) the appointment order was issued on condition that their services can be terminated at any time on completion of the work. So far as appointment being not regular is concerned, the learned Assistant Government Pleader is not able to point out any prescribed procedure for recruitment to the posts held by the petitioners, that being so until there was any prescribed procedure, to brand the recruitment of the petitioners to be irregular in face of the fact that the names of petitioners were recommended by Employment Exchange, it cannot be accepted by this Court. It is very much on record that the appointment was made after the names of the petitioners along with the other persons were forwarded by the Employment Exchange. Unless this court is convinced of the fact that the petitioners are the entrants from the back door, the relief cannot be denied. It is equally true that, the relief as prayed for cannot be granted and therefore, it is granted with necessary modification. The respondents are directed to consider the case of the petitioners for regularisation, without being obsessed with the fact that the appointment

order of the petitioners had a condition that their services can be terminated on completion of the work. The authorities shall sympathetically consider the case of the petitioners for regularisation. It will not be out of place to mention that the authorities cannot be unmindful of the fact that by now the petitioners have put in 22 years of service and had put in more than 5 years of service before they approached this Court and the respondents of their own have continued the other persons in service, may be on the plea that the case of other persons will be decided only after this petition is decided. The authorities shall also keep in mind the approach of the Government in similar other matters which is reflected from the Government Resolution dated 17.10.1988. Only because the present petitioners are not included in that Government Resolution does not disqualify them from getting a similar treatment. It is not a mere formal reiteration that, from the record it is clear that there is sufficient work at DCHB Unit and DCHB unit is not supposed to be co-terminus with census exercise. In fact from the nature of the work which is more than clear, from the document on record, that work of DCHB starts only after collection of data in census. Therefore, it cannot be said that the work of DCHB comes to an end with the census. It can also be gainfully noted that even according to the officers of DCHB, working of the DCHB is perennial and is not temporary in nature by any stretch of imagination.

25. In the result the present petition is allowed. The respondents are directed not to terminate the services of the petitioners until the case of the petitioners is decided afresh. The decision, if adverse to the petitioners, shall not be implemented for a period of 15 (fifteen) days from the date of communication of the same to the petitioners by a RPAD letter. Rule is made absolute to the aforesaid extent. No order as to costs.

26. In view of the decision in the main petition, no orders on Civil Application No.1809 of 1987 and Civil Application No.898 of 1991. The same are disposed of. Notice is Civil Application No.1809 of 1987 is discharged. Interim relief granted in Civil Application No.1809 of 1987 is vacated.

(Ravi R. Tripathi, J.)

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